HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 978 (S/S) of 2003

Sunny Kumar vs State of others

Approved for reporting.

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Not approved for reporting

Date of decision 13-7-05

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 978 (S/S) OF 2003

Sunny Kumar,
S/o late Shri Nathi Ram,
R/o Quarter No. 68, Reserve Police Lines,
Dehradun, District Dehradun. .....Petitioner.

Versus

1. State of Uttaranchal
   through Secretary, Home,
   Uttaranchal, Dehradun.
2. Director General of Police,
   Uttaranchal, Dehradun.
3. Deputy Inspector General of Police (Personnel),
   Uttaranchal Head Quarter, Dehradun.
4. Senior Superintendent of Police, Dehradun.

Dated: July 13, 2005

Sri Ramji Srivastava, learned counsel for the petitioner.
Learned Standing Counsel.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ, order or direction in the nature of certiorari praying for quashing the order dated 7th November, 2003 (Annexure-10 to the Writ Petition) passed by the Deputy Inspector General of Police, Uttaranchal, Dehradun.

Briefly stated, late Sri Nathi Ram, father of the petitioner was working on the post of Constable in LIO, Dehradun. He died on 02.05.1996 while in service. He left behind him his wife namely Smt. Kusum Lata, son namely Sani Kumar, another son Gaurav Kumar and daughter namely Km. Renu. At the time of the death, his father was 40 years of age.

Learned counsel for the petitioner has submitted that after the death of Sri Nathan Ram Smt. Kusum Lata-mother of

the petitioner made an application to the respondent no. 4 on 18th May, 1996 requesting him for giving compassionate appointment to the petitioner in the department as she was not physically fit for the government service. The said application was forwarded by the respondent no. 4 to Uttar Pradesh Police Head Quarter, Allahabad vide its letter dated 22.05.1996.

Learned counsel for the petitioner has submitted that since at the time of death of Shri Nathi Ram, the petitioner was aged about 14 years, therefore, the application of the petitioner was not forwarded and a note was made that the same will be sent after the petitioner attains the age of majority. The said direction is quoted below:--

"कृपया इस सम्बन्ध में अवगत कराना है कि इस जनपद के कान्सि0 एल0आई0यू0 नाथीराम को दिनांक 2–5–1996 को सेवाकाल के दौरान मृत्यु हो चुकी है। मृतक आश्रित नियमावली के अर्न्तगत सेवायोजन के प्रकरण में उक्त मृतक कान्सि की पत्नी श्रीमती कुसुमलता उर्फ कुसुम देवी ने इस आषय का प्रार्थना–पत्र दिनांकित 18–5–1996 को प्रस्तुत किया है कि उसका बड़ा लड़का सनी कुमार, जिसकी आयु 14 वर्ष है, को वह मृतक आश्रित नियमावली के अन्तर्गत सेवायोजित कराना चाहती है। इस प्रार्थना–पत्र की छाया प्रति संलग्न कर प्रेषित है।

अतः स्व0 कान्सि नाथीराम के पुत्र के बालिग होने पर सेवायोजन का प्रकरण पृथक से प्रेषित किया जायेगा।"

On 24th October, 2000, Smt. Kusum Lata, mother of the petitioner has made an application to the respondent no. 4 that the petitioner is aged about 16 and is studying in Class-XII and the same can be considered while relaxing the two years of age in view of the Government Order dated 20.01.1999.

Further the petitioner was informed on 1st No
well be considered. The letter dated 1st November, 2000 is quoted below:-

"कृपया वरिष्ठ पुलिस अधीक्षक, देहरादून को सम्बोधित एवं पुलिस उपमहानिरीक्षक (अभिसूचना), अभिसूचना विभाग, लखनऊ को पृष्ठांकित अपने प्रार्थना–पत्र का सन्दर्भ लें, जिसमें आपने अपने पति स्वर्गीय नाथीराम के मृतक आश्रित के रूप में अपने अल्पवयस्क पुत्र सनी कुमार को सेवायोजन हेतु आयु में 2 वर्ष की षिथिलता प्रदान करने की प्रार्थना की है।

उक्त सन्दर्भ में आपको सूचित किया जाता है कि वर्तमान समय में लागू शासनादेषों के अनुसार मृतक आश्रित को सेवायोजन हेतु सरकारी सेवक की मृतक के 5 वर्ष का समय शेष होने का प्रष्न है। इस सम्बन्ध में आपको सूचित करना है कि भविष्य में जब आप द्वारा मृतक आश्रित के रूप में भर्ती होने हेतु आवेदन–पत्र प्रस्तुत किया जायेगा, तब उस समय लागू शासनादेषों के अनुसार ही उस पर कार्यवाही किया जाना सम्भव हो सकेगा।"

Again on 24th April, 2001, Smt. Kusum Lata, mother of the petitioner preferred an application to the respondent no. 4 requesting him for the appointment of the petitioner on compassionate ground as now the petitioner has attainted the majority. The Circle Officer, Lines, Dehradun vide its letter dated 04.12.2002 also requested the respondent no. 4 regarding the financial hardships to the petitioner. Letter dated 04.12.2002 is quoted below:-

"कृपया अपने पत्र संख्या–न– 146/2002 दिनांक 22–11–2002 का सन्दर्भ ग्रहण करने का कष्ट करें, जो इस जनपद में नियुक्त कानि0 एल0आई0यू0 नाथीराम की दिनांक 2–5–1996 को सेवाकाल के दौरान मृत्यु हो जाने के फलस्वरूप उनकी पत्नी श्रीमती कुसुमलता ने अपने पुत्र सनी कुमार को मृतक आश्रित सेवा नियमावली के अनतर्गत सेवायोजित किये जाने के सम्बन्ध में इनकी आर्थिक स्थिति की पहलुओं की समीक्षा कर आख्या उपलब्ध कराये जाने विषयक है।

उक्त सम्बन्ध में अवगत कराना है कि मृतक आरक्षी एल0आई0यू0 श्री नाथीराम का परिवार पुलिस लाईन परिसर में सरकारी आवास संख्या–68 में रहता है। परिवार में पत्नी के अलावा तीन बच्चे हैं, जो कमषः बी0ए0 द्वितीय वर्ष, कक्षा–12 व

कक्षा– 11 में षिक्षारत है। मृतक की पत्नी को वर्तमान में परिवारिक पेंषन मात्र 2739–00 रूपये प्राप्त होती है जो आज के परिवेष में बहुत ही अल्प राषि है। उक्त धनराषि से घर का खर्चा चलना एवं बच्चों की पढ़ाई आदि का खर्च पूर्ण नहीं हो सकता है। आवेदिका द्वारा अपने आप को अल्सर की बीमारी होना भी बताया है। इस परिवार के आय के अन्य कोई और श्रोत नहीं हैं।

ऐसी परिस्थिति में यदि मृतक आरक्षी के किसी आश्रित को सेवायोजित किया जाता है तो इस परिवार की आर्थिक स्थिति सही हो सकती है।"

Again on 4th July, 2003, the mother of the petitioner Smt. Kusum Lata has filed an application before the respondent no.3 requesting him to give the appointment to the petitioner stating therein that the family is suffering a financial hardship. The application was forwarded on 11.07.2003 as will appear from the following recommendations:

विषयः श्री सनी कुमार पुत्र स्व0 कानि0 एल0आइ0यू0 नाथीराम को सेवायोजित किये जाने के सम्बन्ध में।

सन्दर्भः आपका पत्र संख्या–डीजी–एक–370–2002(50) दिनांक 3–3–2003

कृपया उपरोक्त सन्दर्भित पत्र का अवलोकन करने का कष्ट करें जो प्रमुख सचिव, गृह, उत्तरांचल शासन, देहरादून को सम्बोधित एवं इस कार्यालय को पृष्ठांकित है एवं श्री सनी कुमार पुत्र स्व0 कानि0 एल0आई0यू0 नाथीराम को सेवायोजित किये जाने हेतु निर्धारित पांच वर्ष के प्रतिबन्ध से छूट प्रदान करने की स्वीकृति प्रदान किये जाने विषयक है।

उक्त सम्बन्ध में अवगत कराना है कि स्व0 कानि0 एल0आई0यू0 श्री नाथीराम की पत्नी श्रीमती कुसुमलता ने अपने पुत्र को शीघ्र सेवायोजित किये जाने हेतु आवेदन इस कार्यालय में किया है। अतः श्रीमती कुसुमलता का मूल प्रार्थना–पत्र संलग्न कर अवलोकनार्थ एवं अग्रिम आदेष हेतु प्रेषित है।"

On 7th November, 2003, the application of the petitioner was rejected on the ground that after completion of five years,

the application has been made. Relevant paragraph 4 of order dated 07.11.2003 is quoted below:-

"चूंकि याची सनी कुमार द्वारा अपने पिता की मृत्यु के दिनांक से पांच वर्ष की अवधि के बाद सेवायोजन हेतु आवेदन प्रस्तुत किया, जिस पर सेवायोजिन दिये जाने अथवा न दिये जाने का निर्णय शासन द्वारा लिया जा सकता है, अतः मृतक आश्रित सेवा नियमावली के उपरोक्त प्राविधानों के अनुसार अधोहस्ताक्षरी द्वारा याची के आवेदन को दिनांक 9–9–2003 को उत्तरांचल शासन को समय सीमा में षिथिलता प्रदान करने हेतु सन्दर्भित किया गया है।"

Recruitment of a family of the deceased under the provisions of Rule 5 of the U.P. Government Servants Dying in Harness Rules, 1974 is quoted below:-

"[5. recruitment of a member of the family of the deceased.-(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years form the date of death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]

(3) Each appointment under sub-rule (1) should be under that condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.]

As will appear from Annexure-10 that from time to time the mother of the petitioner was applying for the appointment on compassionate ground but the petitioner was not given the appointment on the ground that he was minor. Two orders passed by the respondents for considering the application after attaining the majority have also been referred above.

In ***1994 (4) SCC Page 138 Umesh Kumar Nagpal,*** the Apex Court has emphasized that the whole object of giving compassionate appointment is to enable the family to tied over the sudden crisis. The observations are quoted below:-

"For these very reason, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employement is not a vested right which can be exercised at

any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employement cannot be claimed and offered whatever the lapse of time and after the crisis is over".

In Smt. ***Sushma Gosain V.s and others vs. Union of India and others, (1989 (4) SCC 468)*** it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

A similar view was taken in the matter of ***Smt. Phoolwati v. Union of India and others, AIR 1991 SC 469*** following the view taken in Smt. Sushma Gosain's case (supra)

In ***State of U.P. and Ors. v. Paras Nath (1998 (2) SCC 412)*** it was held tat the purpose of providing employement to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments.

In the matter of ***Hansraj H. Jain v. State of Maharashtra, reported in (1993) 3 SCC 634*** Hon'ble Supreme Court has held that the public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness.

In ***1996 (1) SCC 301 Jagdish Prasad V. State of Bihar & another,*** the observations are quoted below:-

"….The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

A perusal of the record shows that it is a case, where the mother of the petitioner has applied for the compassionate appointment right from 18.06.1996 and her husband died on 2nd May, 1996. Thereafter the respondent no. 4 has assured the petitioner on 22nd May, 1996 to accommodate the petitioner after attaining the majority. Similar assurance was given on 1st November, 2000.

I see no reason not to accommodate the petitioner after attaining the majority. There has been a legitimate expectation in the mind of the petitioner for getting the compassionate appointment after attaining the majority, therefore, action on the part of the respondent to reject the application on 7th November, 2003 on the ground that the state Government has not taken any action in relaxing the age. Petitioner, therefore, cannot be allowed to suffer on account of the fact that no decision has been taken with regard to relaxation as contained in Rule 5 of the U.P. Government Servants Dying-in-Harness Rules, 1974.

Admittedly, the mother of the petitioenr was not given any appointment and the petitioner was assured to be given appointment after attaining the majority, the whole purpose of getting the compassionate appointment is being frustrated by the respondent. It is a hard case, where the application of the petitioner for appointment has been rejected without invoking to the relaxation clause. There has been no finding of the

respondent that the family status of the petitioner has been improved. It is a fit case, where the proviso to Rule 5 for the U.P. Government Servants Dying in Harness Rules, 1974 has to be attracted by relaxing the period of five years as there ahs been an undue hardship with the petitioner as the mother has already applied earlier on account of the financial crisis and the petitioenr was assured that he will be accommodated. The doctrine of *'legitimate expectation'* applies to the facts of the present case.

Further, there is no evidence on the record that any of the family member is earning and the situation of the family has been improved. It is well established that the appointment on the compassionate ground only enables the family to rehabilitate themselves on account for the loss of bread-earner. The rejection of the application is, therefore, not warranted in any circumstances so as to oust the family member from claiming the appointment on compassionate ground.

Consequently, a writ of certiorari is issued quashing the order dated 07.11.2003 passed by the Deputy Inspector General of Police (Peronnel), Uttaranchal, Dehradun-respondent no.3.

Further, a writ of mandamus is issued directing the respondents to consider the case of the petitioner for appointment on compassionate ground within a period of one month from the passing of the order.

Writ petition is allowed.

(Rajesh Tandon, J.)

Dated: July 13, 2005

Rathour